# AMENDED STATEMENT OF THE QUESTION PRESENTED

Should this Court review or peremptorily reverse the Court of Appeals' published opinion affirming the denial of summary disposition of a claim alleging bad-faith failure to settle by Citizens, where Citizens' insured is insulated from pecuniary loss because of a release executed by the underlying plaintiff, given this Court's holding in *Frankenmuth v Keeley*, 433 Mich 525, 447 NW2d 691 (1989), *rev'd on reh'g*, 436 Mich 372 (1990), that a bad-faith failure to settle claim is based in contract and, thus, a plaintiff's recovery is limited to pecuniary loss suffered by or actually collectable from the insured?

Defendant-Appellant Citizens answers: "YES." Plaintiffs-Appellees would answer: "NO." The Court of Appeals would answer: "NO." The trial court would answer: "NO."





APR - 5 2004

CORBIN R. DAVIS CLERK MICHIGAN SUPREME COURT

#### STATE OF MICHIGAN

### MICHIGAN SUPREME COURT

J & J FARMER LEASING, INC., FARMER BROTHERS TRUCKING CO., INC. CALVIN ORANGE RICKARD, JR., and JAMES W. RILEY, as Personal Representative of the ESTATE OF SHARYN ANN RILEY, Deceased,

S. Ct. No. Court of Appeals No. 239069 L.C. No. 96-3742 NO

Plaintiffs-Appellees,

V

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant-Appellant.

## **PROOF OF SERVICE**

STATE OF MICHIGAN ) ss.
COUNTY OF OAKLAND)

Jeffrey C. Gerish being first duly sworn, deposes and says on the 2<sup>nd</sup> day of April, 2004, he caused to be served a copy of the Amended Statement of Question Presented, and proof of service upon the following:

Robert E. Logeman, Esq James A. Iafrate Esq. Attorneys for Plaintiff 2950 S. State Street, Suite 400 Ann Arbor, MI 48104 Appellate Clerk
Washtenaw County Circuit Court
101 E. Huron
P.O. Box 8645
Ann Arbor, MI 48107-8645

Clerk of the Court Court of Appeals 27777 Franklin Rd., Ste 700 Southfield, MI 48034-2055

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by enclosing same in a pre-addressed, pre-star	mped envelope and depositing same in the United
States Mail.	an 1st
	Jeffrey C. Gerish

Subscribed and sworn to before me this 2<sup>nd</sup> day of April, 2004

Notary Public, Oakland County, MI My Commission Expires: 12/08/05

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Professional Corporation Attorneys and Counsellors at Law



(248) 901-4000 Fax (248) 901-4040 www.plunkettcooney.com

# April 2, 2004

Clerk of the Court Michigan Supreme Court 925 W. Ottawa P O Box 30052 Lansing, MI 48909

Re:

J&J Farmer Leasing v Citizens Ins Co

Court of Appeals Docket No. 239069

Our File: 00392.65111



### Dear Clerk:

Enclosed for filing please find defendant-appellant's amended statement of the question presented. This filing amends the statement of the question presented that is part of defendant's application for leave to appeal that was filed with the Court on March 25, 2004. Please note that the amendment does not alter the language of the question presented, but only the answers that the parties and lower courts would give. In its original statement, each of those answers are the opposite of what they should have been, due to oversight of counsel. An original and seven copies of the amended statement are enclosed. Also enclosed is a proof of service of the amended statement of the question presented on counsel for plaintiff, Robert Logeman.

Thank you for accepting this filing, and please contact me if you have any questions or concerns.

Sincerely,

Jeffrey C. Gerish

Direct Dial: (248) 901-4031

East Lansing

Email: jgerish@plunkettcooney.com

JCG/rym Enclosure

e: Robert E. Logeman (w/enc)

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